
STATUTORY INSTRUMENTS

1996 No. 2660

The Duffield and Wirksworth Light Railway Order 1996

Citation and commencement

1. This Order may be cited as the Duffield and Wirksworth Light Railway Order 1996 and shall come into force on 16th October 1996.

Interpretation

2.—(1) In this Order, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them:—

“the Act” means the Light Railways Act 1896;

“the Company” means WyvernRail Limited, a Company incorporated under the Companies Act 1985(1) and having its registered office at 324 Manchester Road, West Timperley, Altrincham, Cheshire;

“the Company’s Railway” means the Railway, or part thereof, authorised to be maintained and worked by the Company as a light railway pursuant to article 3 below;

“Decision Point” means the point on a user-worked crossing or footpath crossing where guidance on crossing safely is visible and a decision to cross or wait can be made in safety;

“Grid Reference” means an Ordnance Survey Grid Reference;

“the lease” means any lease granted under paragraph (1) of article 3 below, any extension of the same or any new lease granted under any statutory powers or provisions;

“the operative date” means the day on which the Railway or any part thereof is vested in the Company pursuant to the lease;

“Railtrack” means Railtrack PLC, a company incorporated under the Companies Act 1985 and having its registered office at 40 Bernard Street, London WC1N 1BY;

“the Railway” means the railway of Railtrack described in Schedule 1 below and includes all the lands and works relating thereto;

“Sighting Distance” means the distance measured along the Railway from a Decision Point to the point at which an approaching train becomes visible in any direction from which a train may approach;

“Warning Time” means the shortest possible time for trains to travel the Sighting Distance or, where whistle boards are provided, the shortest time between the sound being heard at the crossing and the train arriving at the crossing.

(2) In this Order, all distances, lengths, measurements and directions stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, length, measurement and direction, and distances between points on a railway shall be taken to be measured along the railway.

Leasing of the Railway to the Company

3.—(1) Railtrack may lease to the Company the Railway or any part thereof on such terms and conditions as may be agreed between Railtrack and the Company.

(2) Except as otherwise provided in this Order, as from the operative date and until the lease shall be determined whether by effluxion of time or otherwise the Company's Railway or any part thereof shall be subject to all statutory and other provisions applicable to the Railway (insofar as the same are still subsisting and capable of taking effect) and the Company to the exclusion of Railtrack shall be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the Railway (insofar as the same are subsisting and capable of taking effect) to the intent that Railtrack shall be released from all such obligations.

(3) As from the operative date and until such determination of the lease the Company may maintain and work the Company's Railway or any part thereof as a light railway under the Act.

Incorporation and application of enactments

4.—(1) Subject to the provisions of this Order the following provisions of the Railways Clauses Consolidation Act 1845(2) are hereby incorporated with, and form part of, this Order:—

section 24 (obstructing construction of railway);

section 46 (crossing of roads-level crossings);

section 47 (provision in cases where roads are crossed on a level);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in the case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(3);

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

(2) The following provisions of the Railways Clauses Act 1863(4) shall be incorporated in this Order—

sections 5, 6 and 7 (level crossings); and

section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

(2) 1845 c. 20.

(3) 1923 c. 20.

(4) 1863 c. 92.

“the company” means the Company;

“goods” includes any thing conveyed on the Company’s Railway;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means the Company’s Railway;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be worked by this Order.

(4) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always, that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

(5) In accordance with the provisions of subsection (1) of section 12 of the Act, and subject to paragraph (6) below, the following enactments shall apply to the Company’s Railway:—

The Regulation of Railways Act 1868⁽⁵⁾—

Section 22 (Means of communication between passengers and the company’s servants to be provided);

The Regulation of Railways Act 1889⁽⁶⁾—

Section 1 (power to order certain provisions to be made for public safety);

Section 5 (penalty for avoiding payment of fare).

(6) In its application to the Company’s Railway section 22 of the Regulation of Railways Act 1868 shall have effect as if the words “and travels more than twenty miles without stopping” were omitted therefrom.

(7) Without prejudice to the foregoing provisions of this article, sections 116 to 118 of the Transport Act 1968 shall apply to bridges over the Company’s Railway as if references in those sections to the British Railways Board were references to the Company.

Gauge of the Company’s Railway and motive power

5.—(1) The Company’s Railway shall be operated on a gauge of 1435 millimetres and the motive power shall be diesel or steam or internal combustion or such other motive power as the Secretary of State may approve in writing.

(2) Nothing in this Order shall authorise the Company to use electrical power as motive power on the Company’s railway unless such power is obtained from storage batteries or from a source of generation entirely contained in and carried along with the engine and carriages.

(3) If electrical power is used as motive power on the Company’s Railway, such electrical power shall not be used in such a manner as to cause, or be likely to cause, any interference with telecommunications apparatus (as defined in Schedule 2 to the Telecommunications Act 1984⁽⁷⁾) or with telecommunication by means of such apparatus.

(5) 1868 c. 119.

(6) 1889 c. 57.

(7) 1984 c. 12.

Provision as to the crossings of public and private roads and paths on the level

6. As from the operative date the Company—
- (a) may maintain the crossings on the level of the unclassified public roads described in Schedule 2 below and the footpaths described in Schedule 3 below (and any accommodation crossing or right of way existing upon or over the railway);
 - (b) shall maintain signs stating “STOP, LOOK AND LISTEN” on each side of the Railway facing persons approaching each of the crossings specified in Schedule 3 to this Order and the safety devices respectively specified for each of the said crossings in the sixth column of Schedule 3 to this Order shall be maintained on both sides of the said crossings. At all user worked and footpath crossings the Warning Time shall be greater than the time required by users to traverse the crossing surface between the Decision Points and where necessary whistle boards shall be erected to achieve this requirement.

7. Nothing in this Order shall affect the application to the crossings described in Schedule 2 below of the British Railways Board (Midland Railway) (Idridgehay Level Crossing) Order 1978 and the British Railways Board (Midland Railway) (Gorsey Bank Level Crossing) Order 1979 made under section 66 of the British Transport Commission Act 1957⁽⁸⁾, or the power of the Secretary of State to amend or revoke those Orders under section 66(7) of that Act, and the Company shall provide the lights, traffic signs and other devices and appliances and shall observe the conditions and requirements in relation to those crossings, their use and operation specified in those Orders.

Restrictions on conveyance of passengers

8. No part of the Company’s Railway shall be used for the conveyance of passengers without prior written permission of the Secretary of State and the Company shall comply with the conditions (if any) which the Secretary of State may from time to time prescribe for the safety of persons using the Company’s Railway.

For the protection of sewerage and water undertakers

9.—(1) For the protection of sewerage and water undertakers (in this article referred to as “the undertakers”) the following provisions shall, unless otherwise agreed in writing between the Company and the undertaker concerned, apply and have effect.

(2) In this article, “relevant pipe” in relation to an undertaker has the meaning given in section 158 of the Water Industry Act 1991⁽⁹⁾.

(3) Where any relevant pipe is situated in any land owned or held for the purpose of the Company’s Railway the Company shall at their own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave the relevant pipe accessible for the purpose of repairs.

(4) The Company shall afford reasonable facilities to the undertakers for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove, alter or use any relevant pipe.

(5) The Company shall compensate the undertakers—

- (a) for any damage done or disturbance caused to any relevant pipe; and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers by reason or in consequence of the execution, maintenance, user or failure of any of the works authorised by this Order or otherwise by reason or in consequence of the exercise by the Company of the powers of this Order.

⁽⁸⁾ 1957 c.xxxiii.

⁽⁹⁾ 1991 c. 56.

(6) Nothing in the foregoing paragraph shall entitle the undertakers to any payment in respect of damage attributable to the neglect or default of the undertakers, their servants or agents.

(7) Nothing in this Order shall prejudice or affect the rights of the undertakers in respect of any relevant pipe or the provisions of any agreement regulating the relationship between the Company and the undertakers with regard to any relevant pipe and whether made before or after this Order comes into force.

(8) Any difference arising between the Company and the undertakers under this article shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President for the time being of the Institution of Civil Engineers.

For the protection of the Environment Agency

10.—(1) For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the Company and the Agency, apply and have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991⁽¹⁰⁾ or any byelaws made under that Act or the Land Drainage Act 1991⁽¹¹⁾ in relation to anything done under or in pursuance of this Order.

(a) (3) (a) Before carrying out any works involving the erection or raising of any obstruction to the flow of any watercourse or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any watercourse in, under or through any land held for the purposes of or in connection with the Railway, the Company shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.

(b) For the purposes of this paragraph, “plans” includes sections, drawings, specifications, calculations and descriptions.

(4) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the Railway, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the Company in good repair and condition and free from obstruction.

(5) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article the Company shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Company as a debt due from them to the Agency.

(6) Any dispute or difference which may arise between the Agency and the Company under this article shall be referred to and determined by a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President for the time being of the Institution of Civil Engineers on application of either party (after notice in writing to the other of them).

For the protection of public gas transporters

11. Nothing in this Order shall prejudice or affect the rights of any public gas transporter within the meaning of Part I of the Gas Act 1986⁽¹²⁾ in any apparatus belonging to them or for the

⁽¹⁰⁾ 1991 c. 57.

⁽¹¹⁾ 1991 c. 59.

⁽¹²⁾ 1986 c. 44.

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maintenance of which they are responsible, or any structure for the lodging therein of apparatus, being any apparatus or structure situate under, over or upon lands in or upon which the Company's Railway is constructed.

Signed by authority of the Secretary of State for Transport

15th October 1996

R. A. Allan
An Under Secretary,
Department of Transport